

**PROPERTY TAX ASSESSMENT OF CABLE
TELEVISION COMPANIES**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Property Tax Act relating to property assessed by the Utah State Tax Commission.

Highlighted Provisions:

This bill:

- requires the Utah State Tax Commission to assess the property of cable;
- defines terms; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on January 1, 2009.

Utah Code Sections Affected:

AMENDS:

59-2-102, as last amended by Laws of Utah 2007, Chapters 107, 234, and 329

59-2-201, as last amended by Laws of Utah 2007, Chapters 119 and 306

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-2-102** is amended to read:



59-2-102. Definitions.

As used in this chapter and title:

(1) "Aerial applicator" means aircraft or rotorcraft used exclusively for the purpose of engaging in dispensing activities directly affecting agriculture or horticulture with an airworthiness certificate from the Federal Aviation Administration certifying the aircraft or rotorcraft's use for agricultural and pest control purposes.

(2) "Air charter service" means an air carrier operation which requires the customer to hire an entire aircraft rather than book passage in whatever capacity is available on a scheduled trip.

(3) "Air contract service" means an air carrier operation available only to customers who engage the services of the carrier through a contractual agreement and excess capacity on any trip and is not available to the public at large.

(4) "Aircraft" is as defined in Section 72-10-102.

(5) "Airline" means any air carrier operating interstate routes on a scheduled basis which offers to fly passengers or cargo on the basis of available capacity on regularly scheduled routes.

(6) "Assessment roll" means a permanent record of the assessment of property as assessed by the county assessor and the commission and may be maintained manually or as a computerized file as a consolidated record or as multiple records by type, classification, or categories.

(7) (a) "Cable system" means a system of providing television, voice, data, or Internet access to consumers via radio frequency signals transmitted through fixed optical fibers or coaxial cables.

(b) "Cable system" does not include a system of providing television, voice, data, or Internet access to consumers via an over-the-air method used in traditional television broadcasting (via radio waves) in which a television antenna is required.

(8) "CATV" means Community Antenna Television:

(a) that is provided in areas where over-the-air reception is limited by mountainous terrain;

(b) where a large community antenna is constructed; and

(c) where cable is run from the community antenna to a residence.

59 ~~[(7)]~~ (9) (a) "Certified revenue levy" means a property tax levy that provides the same
60 amount of ad valorem property tax revenue as was collected for the prior year, plus new
61 growth, but exclusive of revenue from collections from redemptions, interest, and penalties.

62 (b) For purposes of this Subsection ~~[(7)]~~ (9), "ad valorem property tax revenue" does
63 not include property tax revenue received by a taxing entity from personal property that is:

64 (i) assessed by a county assessor in accordance with Part 3, County Assessment; and

65 (ii) semiconductor manufacturing equipment.

66 ~~[(8)]~~ (10) "County-assessed commercial vehicle" means:

67 (a) any commercial vehicle, trailer, or semitrailer which is not apportioned under
68 Section 41-1a-301 and is not operated interstate to transport the vehicle owner's goods or
69 property in furtherance of the owner's commercial enterprise;

70 (b) any passenger vehicle owned by a business and used by its employees for
71 transportation as a company car or vanpool vehicle; and

72 (c) vehicles which are:

73 (i) especially constructed for towing or wrecking, and which are not otherwise used to
74 transport goods, merchandise, or people for compensation;

75 (ii) used or licensed as taxicabs or limousines;

76 (iii) used as rental passenger cars, travel trailers, or motor homes;

77 (iv) used or licensed in this state for use as ambulances or hearses;

78 (v) especially designed and used for garbage and rubbish collection; or

79 (vi) used exclusively to transport students or their instructors to or from any private,
80 public, or religious school or school activities.

81 ~~[(9)]~~ (11) (a) Except as provided in Subsection ~~[(9)]~~ (11)(b), for purposes of Section
82 59-2-801, "designated tax area" means a tax area created by the overlapping boundaries of only
83 the following taxing entities:

84 (i) a county; and

85 (ii) a school district.

86 (b) Notwithstanding Subsection ~~[(9)]~~ (11)(a), "designated tax area" includes a tax area
87 created by the overlapping boundaries of:

88 (i) the taxing entities described in Subsection ~~[(9)]~~ (11)(a); and

89 (ii) (A) a city or town if the boundaries of the school district under Subsection ~~[(9)]~~

(11)(a) and the boundaries of the city or town are identical; or

(B) a special service district if the boundaries of the school district under Subsection ~~[(9)]~~ (11)(a) are located entirely within the special service district.

~~[(10)]~~ (12) "Eligible judgment" means a final and unappealable judgment or order under Section 59-2-1330:

(a) that became a final and unappealable judgment or order no more than 14 months prior to the day on which the notice required by Subsection 59-2-919(4) is required to be mailed; and

(b) for which a taxing entity's share of the final and unappealable judgment or order is greater than or equal to the lesser of:

(i) \$5,000; or

(ii) 2.5% of the total ad valorem property taxes collected by the taxing entity in the previous fiscal year.

~~[(11)]~~ (13) (a) "Escaped property" means any property, whether personal, land, or any improvements to the property, subject to taxation and is:

(i) inadvertently omitted from the tax rolls, assigned to the incorrect parcel, or assessed to the wrong taxpayer by the assessing authority;

(ii) undervalued or omitted from the tax rolls because of the failure of the taxpayer to comply with the reporting requirements of this chapter; or

(iii) undervalued because of errors made by the assessing authority based upon incomplete or erroneous information furnished by the taxpayer.

(b) Property which is undervalued because of the use of a different valuation methodology or because of a different application of the same valuation methodology is not "escaped property."

~~[(12)]~~ (14) "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

121 ~~[(13)]~~ (15) "Farm machinery and equipment," for purposes of the exemption provided
122 under Section 59-2-1101, means tractors, milking equipment and storage and cooling facilities,
123 feed handling equipment, irrigation equipment, harvesters, choppers, grain drills and planters,
124 tillage tools, scales, combines, spreaders, sprayers, haying equipment, and any other machinery
125 or equipment used primarily for agricultural purposes; but does not include vehicles required to
126 be registered with the Motor Vehicle Division or vehicles or other equipment used for business
127 purposes other than farming.

128 ~~[(14)]~~ (16) "Geothermal fluid" means water in any form at temperatures greater than
129 120 degrees centigrade naturally present in a geothermal system.

130 ~~[(15)]~~ (17) "Geothermal resource" means:

131 (a) the natural heat of the earth at temperatures greater than 120 degrees centigrade;
132 and

133 (b) the energy, in whatever form, including pressure, present in, resulting from, created
134 by, or which may be extracted from that natural heat, directly or through a material medium.

135 ~~[(16)]~~ (18) (a) "Goodwill" means:

136 (i) acquired goodwill that is reported as goodwill on the books and records:

137 (A) of a taxpayer; and

138 (B) that are maintained for financial reporting purposes; or

139 (ii) the ability of a business to:

140 (A) generate income:

141 (I) that exceeds a normal rate of return on assets; and

142 (II) resulting from a factor described in Subsection ~~[(16)]~~ (18)(b); or

143 (B) obtain an economic or competitive advantage resulting from a factor described in
144 Subsection ~~[(16)]~~ (18)(b).

145 (b) The following factors apply to Subsection ~~[(16)]~~ (18)(a)(ii):

146 (i) superior management skills;

147 (ii) reputation;

148 (iii) customer relationships;

149 (iv) patronage; or

150 (v) a factor similar to Subsections ~~[(16)]~~ (18)(b)(i) through (iv).

151 (c) "Goodwill" does not include:

- 152 (i) the intangible property described in Subsection [~~(20)~~] (22)(a) or (b);
- 153 (ii) locational attributes of real property, including:
- 154 (A) zoning;
- 155 (B) location;
- 156 (C) view;
- 157 (D) a geographic feature;
- 158 (E) an easement;
- 159 (F) a covenant;
- 160 (G) proximity to raw materials;
- 161 (H) the condition of surrounding property; or
- 162 (I) proximity to markets;
- 163 (iii) value attributable to the identification of an improvement to real property,
- 164 including:
- 165 (A) reputation of the designer, builder, or architect of the improvement;
- 166 (B) a name given to, or associated with, the improvement; or
- 167 (C) the historic significance of an improvement; or
- 168 (iv) the enhancement or assemblage value specifically attributable to the interrelation
- 169 of the existing tangible property in place working together as a unit.
- 170 [~~(17)~~] (19) "Governing body" means:
- 171 (a) for a county, city, or town, the legislative body of the county, city, or town;
- 172 (b) for a local district under Title 17B, Limited Purpose Local Government Entities -
- 173 Local Districts, the local district's board of trustees;
- 174 (c) for a school district, the local board of education; or
- 175 (d) for a special service district under Title 17A, Chapter 2, Part 13, Utah Special
- 176 Service District Act:
- 177 (i) the legislative body of the county or municipality that created the special service
- 178 district, to the extent that the county or municipal legislative body has not delegated authority
- 179 to an administrative control board established under Section 17A-2-1326; or
- 180 (ii) the administrative control board, to the extent that the county or municipal
- 181 legislative body has delegated authority to an administrative control board established under
- 182 Section 17A-2-1326.

183 ~~[(18)]~~ (20) (a) For purposes of Section 59-2-103:

184 (i) "household" means the association of persons who live in the same dwelling,
185 sharing its furnishings, facilities, accommodations, and expenses; and

186 (ii) "household" includes married individuals, who are not legally separated, that have
187 established domiciles at separate locations within the state.

188 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
189 commission may make rules defining the term "domicile."

190 ~~[(19)]~~ (21) (a) Except as provided in Subsection ~~[(19)]~~ (21)(c), "improvement" means a
191 building, structure, fixture, fence, or other item that is permanently attached to land, regardless
192 of whether the title has been acquired to the land, if:

193 (i) (A) attachment to land is essential to the operation or use of the item; and

194 (B) the manner of attachment to land suggests that the item will remain attached to the
195 land in the same place over the useful life of the item; or

196 (ii) removal of the item would:

197 (A) cause substantial damage to the item; or

198 (B) require substantial alteration or repair of a structure to which the item is attached.

199 (b) "Improvement" includes:

200 (i) an accessory to an item described in Subsection ~~[(19)]~~ (21)(a) if the accessory is:

201 (A) essential to the operation of the item described in Subsection ~~[(19)]~~ (21)(a); and

202 (B) installed solely to serve the operation of the item described in Subsection ~~[(19)]~~
203 (21)(a); and

204 (ii) an item described in Subsection ~~[(19)]~~ (21)(a) that:

205 (A) is temporarily detached from the land for repairs; and

206 (B) remains located on the land.

207 (c) Notwithstanding Subsections ~~[(19)]~~ (21)(a) and (b), "improvement" does not
208 include:

209 (i) an item considered to be personal property pursuant to rules made in accordance
210 with Section 59-2-107;

211 (ii) a moveable item that is attached to land:

212 (A) for stability only; or

213 (B) for an obvious temporary purpose;

214 (iii) (A) manufacturing equipment and machinery; or
215 (B) essential accessories to manufacturing equipment and machinery;
216 (iv) an item attached to the land in a manner that facilitates removal without substantial
217 damage to:
218 (A) the land; or
219 (B) the item; or
220 (v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that
221 transportable factory-built housing unit is considered to be personal property under Section
222 59-2-1503.
223 [~~(20)~~] (22) "Intangible property" means:
224 (a) property that is capable of private ownership separate from tangible property,
225 including:
226 (i) moneys;
227 (ii) credits;
228 (iii) bonds;
229 (iv) stocks;
230 (v) representative property;
231 (vi) franchises;
232 (vii) licenses;
233 (viii) trade names;
234 (ix) copyrights; and
235 (x) patents;
236 (b) a low-income housing tax credit; or
237 (c) goodwill.
238 [~~(21)~~] (23) "Low-income housing tax credit" means:
239 (a) a federal low-income housing tax credit under Section 42, Internal Revenue Code;
240 or
241 (b) a low-income housing tax credit under:
242 (i) Section 59-7-607; or
243 (ii) Section 59-10-1010.
244 [~~(22)~~] (24) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and

245 uranium.

246 ~~[(23)]~~ (25) "Mine" means a natural deposit of either metalliferous or nonmetalliferous
247 valuable mineral.

248 ~~[(24)]~~ (26) "Mining" means the process of producing, extracting, leaching, evaporating,
249 or otherwise removing a mineral from a mine.

250 ~~[(25)]~~ (27) (a) "Mobile flight equipment" means tangible personal property that is:

251 (i) owned or operated by an:

252 (A) air charter service;

253 (B) air contract service; or

254 (C) airline; and

255 (ii) (A) capable of flight;

256 (B) attached to an aircraft that is capable of flight; or

257 (C) contained in an aircraft that is capable of flight if the tangible personal property is
258 intended to be used:

259 (I) during multiple flights;

260 (II) during a takeoff, flight, or landing; and

261 (III) as a service provided by an air charter service, air contract service, or airline.

262 (b) (i) "Mobile flight equipment" does not include a spare part other than a spare
263 engine that is rotated:

264 (A) at regular intervals; and

265 (B) with an engine that is attached to the aircraft.

266 (ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
267 the commission may make rules defining the term "regular intervals."

268 ~~[(26)]~~ (28) "Nonmetalliferous minerals" includes, but is not limited to, oil, gas, coal,
269 salts, sand, rock, gravel, and all carboniferous materials.

270 ~~[(27)]~~ (29) "Personal property" includes:

271 (a) every class of property as defined in Subsection ~~[(28)]~~ (30) which is the subject of
272 ownership and not included within the meaning of the terms "real estate" and "improvements";

273 (b) gas and water mains and pipes laid in roads, streets, or alleys;

274 (c) bridges and ferries;

275 (d) livestock which, for the purposes of the exemption provided under Section

59-2-1112, means all domestic animals, honeybees, poultry, fur-bearing animals, and fish; and
(e) outdoor advertising structures as defined in Section 72-7-502.

~~[(28)]~~ (30) (a) "Property" means property that is subject to assessment and taxation according to its value.

(b) "Property" does not include intangible property as defined in this section.

~~[(29)]~~ (31) "Public utility," for purposes of this chapter, means the operating property of a railroad, gas corporation, oil or gas transportation or pipeline company, coal slurry pipeline company, electrical corporation, telephone corporation, sewerage corporation, or heat corporation where the company performs the service for, or delivers the commodity to, the public generally or companies serving the public generally, or in the case of a gas corporation or an electrical corporation, where the gas or electricity is sold or furnished to any member or consumers within the state for domestic, commercial, or industrial use. Public utility also means the operating property of any entity or person defined under Section 54-2-1 except water corporations.

~~[(30)]~~ (32) "Real estate" or "real property" includes:

(a) the possession of, claim to, ownership of, or right to the possession of land;

(b) all mines, minerals, and quarries in and under the land, all timber belonging to individuals or corporations growing or being on the lands of this state or the United States, and all rights and privileges appertaining to these; and

(c) improvements.

~~[(31)]~~ (33) "Residential property," for the purposes of the reductions and adjustments under this chapter, means any property used for residential purposes as a primary residence. It does not include property used for transient residential use or condominiums used in rental pools.

~~[(32)]~~ (34) For purposes of Subsection 59-2-801(1)(e), "route miles" means the number of miles calculated by the commission that is:

(a) measured in a straight line by the commission; and

(b) equal to the distance between a geographical location that begins or ends:

(i) at a boundary of the state; and

(ii) where an aircraft:

(A) takes off; or

(B) lands.

~~[(33)]~~ (35) (a) "State-assessed commercial vehicle" means:

(i) any commercial vehicle, trailer, or semitrailer which operates interstate or intrastate to transport passengers, freight, merchandise, or other property for hire; or

(ii) any commercial vehicle, trailer, or semitrailer which operates interstate and transports the vehicle owner's goods or property in furtherance of the owner's commercial enterprise.

(b) "State-assessed commercial vehicle" does not include vehicles used for hire which are specified in Subsection ~~[(8)]~~ (10)(c) as county-assessed commercial vehicles.

~~[(34)]~~ (36) "Taxable value" means fair market value less any applicable reduction allowed for residential property under Section 59-2-103.

~~[(35)]~~ (37) "Tax area" means a geographic area created by the overlapping boundaries of one or more taxing entities.

~~[(36)]~~ (38) "Taxing entity" means any county, city, town, school district, special taxing district, local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or other political subdivision of the state with the authority to levy a tax on property.

~~[(37)]~~ (39) "Tax roll" means a permanent record of the taxes charged on property, as extended on the assessment roll and may be maintained on the same record or records as the assessment roll or may be maintained on a separate record properly indexed to the assessment roll. It includes tax books, tax lists, and other similar materials.

Section 2. Section **59-2-201** is amended to read:

59-2-201. Assessment by commission -- Determination of value of mining property -- Notification of assessment -- Local assessment of property assessed by the unitary method.

(1) By May 1 of each year the following property, unless otherwise exempt under the Utah Constitution or under Part 11, Exemptions, Deferrals, and Abatements, shall be assessed by the commission at 100% of fair market value, as valued on January 1, in accordance with this chapter:

(a) except as provided in Subsection (2), all property which operates as a unit across county lines, if the values must be apportioned among more than one county or state;

(b) all property of public utilities;

(c) all operating property of an airline, air charter service, and air contract service;

(d) all geothermal fluids and geothermal resources;

(e) all mines and mining claims except in cases, as determined by the commission, where the mining claims are used for other than mining purposes, in which case the value of mining claims used for other than mining purposes shall be assessed by the assessor of the county in which the mining claims are located; ~~and~~

(f) all machinery used in mining, all property or surface improvements upon or appurtenant to mines or mining claims. For the purposes of assessment and taxation, all processing plants, mills, reduction works, and smelters which are primarily used by the owner of a mine or mining claim for processing, reducing, or smelting minerals taken from a mine or mining claim shall be considered appurtenant to that mine or mining claim, regardless of actual location[-]; and

(g) all property of cable systems or CATV.

(2) The commission shall assess and collect property tax on state-assessed commercial vehicles at the time of original registration or annual renewal.

(a) The commission shall assess and collect property tax annually on state-assessed commercial vehicles which are registered pursuant to Section 41-1a-222 or 41-1a-228.

(b) State-assessed commercial vehicles brought into the state which are required to be registered in Utah shall, as a condition of registration, be subject to ad valorem tax unless all property taxes or fees imposed by the state of origin have been paid for the current calendar year.

(c) Real property, improvements, equipment, fixtures, or other personal property in this state owned by the company shall be assessed separately by the local county assessor.

(d) The commission shall adjust the value of state-assessed commercial vehicles as necessary to comply with 49 U.S.C. Sec. 14502, and the commission shall direct the county assessor to apply the same adjustment to any personal property, real property, or improvements owned by the company and used directly and exclusively in their commercial vehicle activities.

(3) The method for determining the fair market value of productive mining property is the capitalized net revenue method or any other valuation method the commission believes, or the taxpayer demonstrates to the commission's satisfaction, to be reasonably determinative of the fair market value of the mining property. The rate of capitalization applicable to mines

shall be determined by the commission, consistent with a fair rate of return expected by an investor in light of that industry's current market, financial, and economic conditions. In no event may the fair market value of the mining property be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property.

(4) Immediately following the assessment, the owner or operator of the assessed property shall be notified of the assessment by certified mail. The assessor of the county in which the property is located shall also be immediately notified of the assessment by certified mail.

(5) Property assessed by the unitary method, which is not necessary to the conduct and does not contribute to the income of the business as determined by the commission, shall be assessed separately by the local county assessor.

Section 3. Effective date.

This bill takes effect on January 1, 2009.

Legislative Review Note
as of 1-18-08 2:05 PM

Office of Legislative Research and General Counsel

H.B. 367 - Property Tax Assessment of Cable Television Companies

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
